

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

WILLIAM SPRUILL,)	
)	
Plaintiff,)	
)	
v.)	1:13CV1
)	
CO LUTE, et al.,)	
)	
)	
Defendant(s).)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina, has submitted a document labeled a “Complaint” claiming that an officer made false statements against him in connection with a disciplinary matter, sexually harassed him, and threatened him. Given its styling as a Complaint, rather than a Petition, it appears Plaintiff seeks to pursue a civil rights action pursuant to 42 U.S.C. § 1983. For that reason, this Court will treat Plaintiff’s filing as a Complaint under § 1983. The form of the Complaint is such that serious flaws make it impossible to further process the Complaint. The problems are:

1. The Complaint is not on forms prescribed for use by this Court, nor is the information requested by such forms and necessary to process the Complaint pursuant to 28 U.S.C. § 1915A contained in Plaintiff’s submission. See LR 7.1(e).

2. Filing fee was not received nor was a proper affidavit to proceed *in forma pauperis* submitted, with sufficient information completed or signed by Plaintiff, to permit review.
3. Plaintiff has failed to provide a sufficient number of copies. Plaintiff must submit the original, one copy for the Court, and one copy for each defendant named.
4. The Complaint was not signed. Rule 11, Federal Rules of Civil Procedure.
5. If Plaintiff believes that there was a problem with a disciplinary proceeding that somehow affects the duration of his sentence, such as through the loss of good time or gain time credits, he cannot raise a challenge through an action under § 1983, but must instead first proceed under 28 U.S.C. § 2254. Preiser v. Rodriguez, 411 U.S. 475, 499-500 (1973).

Consequently, the Complaint should be dismissed, but without prejudice to Plaintiff filing a new complaint, on the proper § 1983 or § 2254 forms, which corrects the defects of the present Complaint. To further aid Plaintiff, the Clerk is instructed to send Plaintiff new § 1983 and § 2254 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)).

In forma pauperis status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Plaintiff § 1983 forms and § 2254 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)).

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a new complaint, on the proper § 1983 or § 2254 forms, which corrects the defects cited above.

/s/ L. Patrick Auld

L. Patrick Auld
United States Magistrate Judge

January 23, 2013